

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,)	
)	
Plaintiff-Respondent)	No. CV-08-0569-PHX-PGR (MHB)
vs.)	No. CR-04-0021-PHX-PGR
)	
Jesus Rivero Jaquez-Diaz,)	<u>ORDER</u>
)	
Defendant-Movant.)	

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Burns notwithstanding that no party has filed any objection to the Report and Recommendation, the Court finds that the Magistrate Judge correctly determined that the defendant's motion, filed pursuant to 28 U.S.C. § 2255, should be denied as being without any factual or legal merit.¹

First, as a result of his plea agreement, the defendant voluntarily and validly waived his right to collaterally attack his conviction and sentence through a § 2255 motion. Second, while the defendant claims that his counsel was

¹

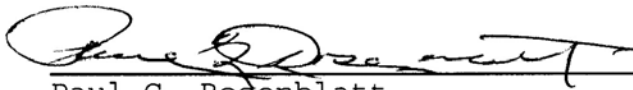
While the record establishes that the copy of the Report and Recommendation mailed to the defendant's last address of record was returned as undeliverable and unforwardable, the Court notes that the defendant was specifically admonished in an order (doc. #82 in CR-04-0021-PHX-PGR), entered on May 7, 2008, that he was required to file a notice of any change of address and that his failure to do so could lead to the dismissal of this action.

1 ineffective at sentencing for advising him that he would not be deported to Mexico
2 if he entered a plea agreement, that contention fails both as a matter of law, since
3 an attorney's failure to advise a client of collateral immigration consequences of a
4 conviction does not constitute ineffective assistance of counsel, and as a matter
5 of fact, since the record clearly establishes that the defendant was specifically
6 placed on notice by the presentence report that he could be deported if convicted
7 and there is no evidence that his counsel advised him otherwise. Third, the
8 defendant's claim of actual innocence is factually and legally meritless given the
9 admissions of guilt set forth in the written plea agreement he signed and his
10 sworn statements of guilt made during the plea colloquy. Therefore,

11 IT IS ORDERED that the Magistrate Judge's Report and Recommendation
12 (doc. #2 in CV-08-569-PHX-PGR) is accepted and adopted by the Court.

13 IT IS FURTHER ORDERED that the defendant-movant's Motion Under 28
14 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal
15 Custody (doc. #1 in CV-08-0569-PHX-PGR and doc. #80 in CR-04-0021-PHX-
16 PGR) is denied. The Clerk of the Court shall enter judgment accordingly.

17 DATED this 2nd day of February, 2009.

18
19
20 
21 Paul G. Rosenblatt
22 United States District Judge
23
24
25
26